

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6808

ROBERT HOLLAND KOON,

Petitioner - Appellant,

versus

STATE OF SOUTH CAROLINA; CHARLES MOLONY
CONDON, South Carolina Attorney General,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Anderson. C. Weston Houck, Senior District
Judge. (CA-01-3397-8)

Submitted: September 9, 2004 Decided: September 15, 2004

Before WILKINSON, MICHAEL, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Holland Koon, Appellant Pro Se. Donald John Zelenka, Chief
Deputy Attorney General, William Edgar Salter, III, OFFICE OF THE
ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Robert Holland Koon seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2254 (2000) petition pursuant to Fed. R. Civ. P. 41(a)(2). The district court's order stemmed from Koon's request that the court dismiss his petition without prejudice in order to allow him to exhaust his state remedies.

A Rule 41(a)(2) voluntary dismissal without prejudice is not appealable. See Unioil, Inc. v. E.F. Hutton & Co., 809 F.2d 548, 555 (9th Cir. 1986) (holding that a plaintiff generally may not appeal a voluntary dismissal without prejudice because it is not an involuntary adverse judgment against him), overruled in part on other grounds by Moore v. Keegan Mgmt. Co., 78 F.3d 431, 434-35 (9th Cir. 1995).

Accordingly, we deny Koon's motion for appointment of counsel, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED